

Application No. 10/649,242

Docket No.: 29939/03015

**REMARKS**

Claims 1-17 were examined in the most recent Office Action, dated October 5, 2005. By way of the Office Action, all claims stand rejected over various references. The Office Action also requires election between the example disclosed in Fig. 3 and the example disclosed in Fig. 6.

**Election Requirement.**

The Office Action alleges that Fig. 3 and Fig. 6 disclose patentably distinct species of the claimed invention. Fig. 3 is alleged to read on claims 1-9 and 13-17, and Fig. 6 is alleged to read on claims 10-12. Applicants previously provisionally elected the example disclosed in Fig. 3. Applicants hereby affirm that election. All claims added or amended in this amendment read on at least the species disclosed in Fig. 3. Applicants understand that claims 10-12 will be reinstated if they depend from an allowed claim that is generic to both species.

**Claim 1 is Allowable.**

Applicants respectfully request withdrawal of the rejection to claim 1, as amended, under 35 U.S.C. § 102(b) as anticipated by Lippisch, U.S. Design Patent No. 372,568. The office action also rejects various claims under 35 U.S.C. § 103(a) as obvious over Lippisch in view of Williams, U.S. Patent No. 5,667,069. Claim 1 recites a laundry basket comprising, in part, a top portion of the sidewall forming a substantially peripheral lip, a portion of the lip transitioning into a handle having a grip and a knuckle guard, the grip and the knuckle guard disposed substantially level with the lip.

Claim 1 is allowable because Lippisch fails to disclose all elements of claim 1, Williams is non-analogous art, and there is no motivation to combine Lippisch and Williams

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in any event. Lippisch fails to disclose a knuckle guard and a grip disposed substantially level with the lip. Instead, Lippisch only discloses a standard laundry basket. The alleged grip noted in the Office Action is the lowermost edge of the sidewall opening, and the alleged knuckle guard is the handle portion. The alleged grip of Lippisch is not substantially level with either the alleged knuckle guard or the lip as claimed.

Further, Williams cannot be added to support a case of obviousness. At the outset, no rejection based even in part on the Williams reference can stand, as the Williams reference is plainly non-analogous art. "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992).

Here, one concerned with the protection of knuckles would never have thought to look to the container of Williams for such a teaching. In fact, the container of Williams is made from "flexible, pliant, thin, membranous material referred to hereinafter for brevity as 'film'." Col. 1, lines 20-22. The teaching of a flexible, pliant, and thin film would never have commended itself to the attention of an artisan working with structure to protect knuckles from impact. It is well-accepted law that non-analogous art can never establish obviousness, *prima facie* or otherwise.

Further, there is no motivation to combine the laundry basket of Lippisch with the container of Williams. Lippisch discloses a first handle design with a grip and an opening in the sidewall. Williams discloses a second handle design with a grip and an aperture and cone extending above the rim. These two different handles are two distinct alternative designs for a handle. By reading the disclosures, one of ordinary skill in the art would select between the two, not combine them. In other words, the disclosures suggest the selection between the two

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alternative designs, not their combination. The fact that the references could be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP § 2143.01(III) (emphasis added). The references provide no suggestion to combine two alternative designs. This combination, then, is pure hindsight reconstruction by the Office. Delouvre, U.S. Design Patent No. 425,275, also cited in the Office Action with respect to claim 6, adds nothing. Accordingly, a *prima facie* case of obviousness has not been made, and claim 1 is allowable over the art of record. Dependent claims 2-9 and 13 are allowable for at least the same reasons.

Independent Claims 14 and 18 are Allowable.

Applicants respectfully request withdrawal of the rejection to Claim 14, as amended, under 35 U.S.C. § 102(b) as anticipated by Lippisch. Claim 14 has been amended to recite a laundry basket comprising, in part, a first knuckle guard spaced from the first grip in a direction generally parallel to the base plane and away from the interior of the basket. Claim 18 has been amended to recite a portable container comprising, in part, a first knuckle guard spaced away from the first grip in a direction away from the interior of the basket and substantially level with the first grip, the first knuckle guard being defined at least in part by a portion of the rim.

As outlined earlier, Lippisch fails to disclose a grip that is substantially level with the knuckle guard. Further, Lippisch fails to disclose a first knuckle guard spaced from the first grip in a direction generally parallel to the plane of the base. Accordingly, claims 14 and 18 are not anticipated by Lippisch.

Claims 14 and 18 are further allowable because Lippisch and Williams cannot be combined. As outlined earlier, Williams is non-analogous art because it discloses a flexible

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film. Further, there is no motivation to combine Lippisch and Williams to arrive at the claimed invention. To do so would combine two of the same elements that one of ordinary skill would select between, not combine. Accordingly, a *prima facie* case of obviousness has not been made, and claims 14 and 18 are allowable. Dependent claims 16 and 19-21 are allowable for at least the same reason.

### CONCLUSION

In view of the foregoing amendments and remarks, it is submitted that the claims as now appearing in this application are in form for allowance. A favorable action on the part of the Examiner is respectfully solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

No fee is believed due with this response. However, the Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 13-2855, under Order No. 29939/03015.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606  
312-474-6300

By: 

Russell C. Petersen  
Registration No. 53,457  
Attorney for Applicants

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